

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

JOANNE ELIZABETH CLEVELAND,)
et al.,)

Plaintiff(s),)

v.)

COMPASS VISION INC., et al.,)

Defendant(s).)

No. C07-5642 BZ

Related Case: C07-3431 BZ

**ORDER DENYING NMS LAB'S
PETITION FOR CERTIFICATION
PURSUANT TO 28 U.S.C.
SECTION 1292(B)**

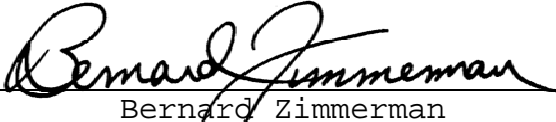
Having reviewed the papers submitted, I find no need for argument. **IT IS HEREBY ORDERED** that NMS Labs' petition for an interlocutory appeal pursuant to 28 U.S.C. section 1292(b) of my February 29, 2008 order denying its motion to dismiss is **DENIED** and the April 30, 2008 hearing is **VACATED**.

The matter is not appropriate for immediate appeal at this time. The issue of whether NMS Labs owed a duty to plaintiffs is not a "'pure question of law'" but instead depends on the application of facts not presented to the court in the motion to dismiss. Sierra Foothills Pub. Util. Dist. v. Clarendon Am. Ins. Co., 2006 WL 2085244, 3* (E.D. Cal.

2006) *quoting* Ahrenholz v. Bd. of Trustees, 219 F.3d 674,
675-77 (7th Cir. 2000).

Nor could an interlocutory appeal result in any
appreciable saving of resources, since NMS is not seeking an
interlocutory appeal in the related case of Wilson v. Compass
Vision, et al. C07-3431.

Dated: April 24, 2008


Bernard Zimmerman
United States Magistrate Judge

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